

107TH CONGRESS  
1ST SESSION

# H. R. 3426

To provide increased flexibility Governmentwide for the procurement of property and services to facilitate the defense against terrorism, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 6, 2001

Mr. TOM DAVIS of Virginia (for himself and Mr. WELDON of Pennsylvania) introduced the following bill; which was referred to the Committee on Government Reform

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## A BILL

To provide increased flexibility Governmentwide for the procurement of property and services to facilitate the defense against terrorism, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Federal Emergency  
5       Procurement Flexibility Act of 2001”.

1 **SEC. 2. CONTRACTING FOR HUMANITARIAN OR PEACE-**  
2 **KEEPING OPERATIONS AND CONTINGENCY**  
3 **OPERATIONS.**

4 (a) INCREASED THRESHOLD FOR SIMPLIFIED ACQUI-  
5 SITIONS.—Section 4(11) of the Office of Federal Procure-  
6 ment Policy Act (41 U.S.C. 403(11)) is amended to read  
7 as follows:

8 “(11)(A) Except as provided in subparagraph  
9 (B), the term ‘simplified acquisition threshold’  
10 means \$100,000.

11 “(B) The term ‘simplified acquisition threshold’  
12 means an amount equal to five times the amount  
13 specified in subparagraph (A) in the case of a con-  
14 tract to be awarded and performed, or purchase to  
15 be made, in support of—

16 “(i) a military operation (not including  
17 routine training, force rotation, or stationing)  
18 in support of the provision of humanitarian or  
19 foreign disaster assistance or in support of a  
20 peacekeeping operation under chapter VI or VII  
21 of the Charter of the United Nations; or

22 “(ii) a contingency operation (as defined in  
23 section 101(a)(13) of title 10, United States  
24 Code).”.

25 (b) CONFORMING AMENDMENTS.—

1           (1) FEDERAL PROPERTY AND ADMINISTRATIVE  
2 SERVICES ACT OF 1949.—Section 309(d) of the Fed-  
3 eral Property and Administrative Services Act of  
4 1949 (41 U.S.C. 259(d)) is amended—

5                   (A) in paragraph (1)—

6                           (i) by striking “(1)”; and

7                           (ii) by striking “, except that,” and all  
8 that follows through “section 4 of such  
9 Act”; and

10                   (B) by striking paragraph (2).

11           (2) TITLE 10, UNITED STATES CODE.—Section  
12 2302(7) of title 10, United States Code, is amended  
13 by striking “, except that,” and all that follows  
14 through “section 4 of such Act”.

15 **SEC. 3. INCREASED MICRO-PURCHASE THRESHOLD FOR**  
16 **CERTAIN PROCUREMENTS.**

17       In the administration of section 32 of the Office of  
18 Federal Procurement Policy Act (41 U.S.C. 428) during  
19 fiscal years 2002 and 2003 with respect to procurements  
20 of property or services by or for an executive agency for  
21 use to facilitate the defense against terrorism or NBCRT  
22 attack, as determined by the head of the executive agency,  
23 the amount specified in subsections (c), (d), and (f) of  
24 such section shall be deemed to be \$25,000.

1 **SEC. 4. APPLICATION OF CERTAIN COMMERCIAL ITEMS AU-**  
2 **THORITIES TO CERTAIN PROCUREMENTS.**

3 (a) **AUTHORITY.—**

4 (1) **IN GENERAL.**—The head of an executive  
5 agency may apply the provisions of law listed in  
6 paragraph (2) in the procurement of property or  
7 services during fiscal years 2002 and 2003 by or for  
8 the executive agency for use to facilitate defense  
9 against terrorism or NBCRT attack, as determined  
10 by the head of the executive agency, without regard  
11 to whether the property or services are commercial  
12 items.

13 (2) **COMMERCIAL ITEM LAWS.**—The provisions  
14 of law referred to in paragraph (1) are as follows:

15 (A) Sections 31 and 34 of the Office of  
16 Federal Procurement Policy Act (41 U.S.C.  
17 427, 430).

18 (B) Section 2304(g) of title 10, United  
19 States Code.

20 (C) Section 303(g) of the Federal Property  
21 and Administrative Services Act of 1949 (41  
22 U.S.C. 253(g)).

23 (b) **INAPPLICABILITY OF LIMITATION ON USE OF**  
24 **SIMPLIFIED ACQUISITION PROCEDURES.—**

25 (1) **IN GENERAL.**—The \$5,000,000 limitation  
26 provided in section 31(a)(2) of the Office of Federal

1 Procurement Policy Act (41 U.S.C. 427(a)(2)), sec-  
2 tion 2304(g)(1)(B) of title 10, United States Code,  
3 and section 303(g)(1)(B) of the Federal Property  
4 and Administrative Services Act of 1949 (41 U.S.C.  
5 253(g)(1)(B)) shall not apply to purchases of prop-  
6 erty or services to which any of the provisions of law  
7 referred to in subsection (a) are applied under the  
8 authority of this section.

9 (2) OMB GUIDANCE.—The Director of the Of-  
10 fice of Management and Budget shall issue guidance  
11 and procedures for the use of simplified acquisition  
12 procedures for a purchase of property or services in  
13 excess of \$5,000,000 under the authority of this sec-  
14 tion.

15 (c) CONTINUATION OF AUTHORITY FOR SIMPLIFIED  
16 PURCHASE PROCEDURES.—Authority under a provision of  
17 law referred to in subsection (a)(2) that expires under sec-  
18 tion 4202(e) of the Clinger-Cohen Act of 1996 (divisions  
19 D and E of Public Law 104–106; 10 U.S.C. 2304 note)  
20 shall, notwithstanding such section, continue to apply for  
21 use by the head of an executive agency as provided in sub-  
22 sections (a) and (b).

23 **SEC. 5. USE OF STREAMLINED PROCEDURES.**

24 The head of an executive agency shall, when appro-  
25 priate, use streamlined acquisition authorities and proce-

1 dures authorized by law for an acquisition, during fiscal  
 2 years 2002 and 2003, of property or services that, as de-  
 3 termined by such official, would facilitate the defense  
 4 against terrorism or NBCRT attack, including authorities  
 5 and procedures that are provided under the following pro-  
 6 visions of law:

7 (1) FEDERAL PROPERTY AND ADMINISTRATIVE  
 8 SERVICES ACT OF 1949.—In title III of the Federal  
 9 Property and Administrative Services Act of 1949:

10 (A) Paragraphs (1), (2), (6), and (7) of  
 11 subsection (c) of section 303 (41 U.S.C. 253),  
 12 relating to use of procedures other than com-  
 13 petitive procedures under certain circumstances  
 14 (subject to subsection (e) of such section).

15 (B) Section 303J (41 U.S.C. 253j), relat-  
 16 ing to orders under task and delivery order con-  
 17 tracts.

18 (2) TITLE 10, UNITED STATES CODE.—In chap-  
 19 ter 137 of title 10, United States Code:

20 (A) Paragraphs (1), (2), (6), and (7) of  
 21 subsection (c) of section 2304, relating to use  
 22 of procedures other than competitive procedures  
 23 under certain circumstances (subject to sub-  
 24 section (e) of such section).

1 (B) Section 2304c, relating to orders  
2 under task and delivery order contracts.

3 (3) OFFICE OF FEDERAL PROCUREMENT POL-  
4 ICY ACT.—Paragraphs (1)(B), (1)(D), and (2) of  
5 section 18(c) of the Office of Federal Procurement  
6 Policy Act (41 U.S.C. 416(c)), relating to inapplica-  
7 bility of a requirement for procurement notice.

8 **SEC. 6. CERTAIN RESEARCH AND DEVELOPMENT BY CIVIL-**  
9 **IAN AGENCIES.**

10 (a) AUTHORITY.—

11 (1) IN GENERAL.—Title III of the Federal  
12 Property and Administrative Services Act of 1949  
13 (41 U.S.C. 251 et seq.) is amended by adding at the  
14 end the following new section:

15 **“SEC. 317. RESEARCH AND DEVELOPMENT TO FACILITATE**  
16 **DEFENSE AGAINST TERRORISM OR NBCRT**  
17 **ATTACK.**

18 “(a) AUTHORITY.—

19 “(1) IN GENERAL.—The head of an executive  
20 agency may engage in basic research, applied re-  
21 search, advanced research, and development projects  
22 that—

23 “(A) are necessary to the responsibilities of  
24 such official’s executive agency in the field of  
25 research and development; and

1           “(B) have the potential to facilitate de-  
2           fense against terrorism or NBCRT attack.

3           “(2) AUTHORIZED MEANS.—To engage in  
4           projects authorized under paragraph (1), the head of  
5           an executive agency may exercise the same authority  
6           (subject to the same restrictions and conditions) as  
7           the Secretary of Defense may exercise under sections  
8           2358 and 2371 of title 10, United States Code, ex-  
9           cept for subsections (b), (f), and (g) of such section  
10          2371.

11          “(3) APPLICABILITY TO SELECTED EXECUTIVE  
12          AGENCIES.—The head of an executive agency may  
13          exercise authority under this subsection only if au-  
14          thorized by the Director of the Office of Manage-  
15          ment and Budget to do so.

16          “(b) NBCRT ATTACK DEFINED.—In this section,  
17          the term ‘NBCRT attack’ means a nuclear, biological,  
18          chemical, radiological, or technological attack on the  
19          United States and includes a technological attack on a na-  
20          tional security system (as defined in section 5142 of the  
21          Clinger-Cohen Act of 1996 (divisions D and E of Public  
22          Law 104–106; 40 U.S.C. 1452)).

23          “(c) ANNUAL REPORT.—The annual report of the  
24          head of an executive agency that is required under sub-  
25          section (h) of section 2371 of title 10, United States Code,



1 as applied to the head of an executive agency by subsection  
2 (a), shall be submitted to the Committee on Governmental  
3 Affairs of the Senate and the Committee on Government  
4 Reform of the House of Representatives.

5 “(d) REGULATIONS.—The Director of the Office of  
6 Management and Budget shall prescribe regulations to  
7 carry out this section.”.

8 (2) CLERICAL AMENDMENT.—The table of sec-  
9 tions in section 1(b) is amended by inserting after  
10 the item relating to section 316 the following new  
11 item:

“Sec. 317. Research and development to facilitate defense against terrorism  
or NBCRT attack.”.

12 (b) TEMPORARY AUTHORITY FOR CARRYING OUT  
13 CERTAIN PROTOTYPE PROJECTS.—

14 (1) IN GENERAL.—The head of an executive  
15 agency designated by the Director of the Office of  
16 Management and Budget to do so may, under the  
17 authority of section 317 of the Federal Property and  
18 Administrative Services Act of 1949 (as added by  
19 subsection (a)), carry out prototype projects that  
20 meet the requirements of subparagraphs (A) and  
21 (B) of subsection (a)(1) of such section in accord-  
22 ance with the same requirements and conditions as  
23 are provided for carrying out prototype projects  
24 under section 845 of the National Defense Author-

1        ization Act for Fiscal Year 1994 (Public Law 103–  
2        160; 10 U.S.C. 2371 note).

3            (2) CONFORMING AUTHORITY.—In the applica-  
4        tion of the requirements and conditions of section  
5        845 of the National Defense Authorization Act for  
6        Fiscal Year 1994 (Public Law 103–160; 10 U.S.C.  
7        2371 note) to the administration of authority under  
8        paragraph (1)—

9            (A) subsection (c) of such section shall  
10        apply with respect to prototype projects carried  
11        out under this subsection; and

12            (B) the Director of the Office of Manage-  
13        ment and Budget shall perform the function of  
14        the Secretary of Defense under subsection (d)  
15        of such section.

16 **SEC. 7. IDENTIFICATION OF NEW ENTRANTS INTO THE**  
17 **FEDERAL MARKETPLACE.**

18        The head of each executive agency shall conduct mar-  
19        ket research on an ongoing basis to identify effectively the  
20        capabilities, including the capabilities of small businesses  
21        and new entrants into Federal contracting, that are avail-  
22        able in the marketplace for meeting the requirements of  
23        the executive agency in furtherance of defense against ter-  
24        rorism or NBCRT attack. The head of the executive agen-  
25        cy shall, to the maximum extent practicable, take advan-

1 tage of commercially available market research methods,  
2 including use of commercial databases, to carry out the  
3 research.

4 **SEC. 8. DEFINITIONS.**

5 In this Act:

6 (1) NBCRT ATTACK.—The term “NBCRT at-  
7 tack” means a nuclear, biological, chemical, radio-  
8 logical, attack against the United States, or a tech-  
9 nological attack against a national security system  
10 (as defined in section 5142 of the Clinger-Cohen Act  
11 of 1996 (divisions D and E of Public Law 104–106;  
12 40 U.S.C. 1452)).

13 (2) EXECUTIVE AGENCY.—The term “executive  
14 agency” has the meaning given the term in section  
15 4(1) of the Office of Federal Procurement Policy  
16 Act (41 U.S.C. 403(1)).

○